Each and everyday you risk your lives
And that makes you a hero
And that makes you a hero
And that makes you a hero in my eyes!

REGULATION OF DERIVATIVE PRODUCTS

HON. JAMES A. LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 31, 1998

Mr. LEACH. Mr. Speaker, in the past fortnight, the Banking Committee has held two hearings on the regulation of over-the-counter markets in derivative and hybrid instruments. Bankers and businessmen, farmers and fund managers use these esoteric financial products, whose value derives from an underlying asset like a government bond or the income stream from a loan, to mitigate risk from changes in commodity prices or interest rates. Few Americans have ever come into contact with one of these instruments, but every American with a pension fund or money in a bank has been affected by them.

I scheduled the hearings in response to an unusual circumstance: three of the four government agencies which have responsibility for overseeing the derivatives market place—the Federal Reserve Board, the Treasury Department, the Securities and Exchange Commission—have come to the conclusion that the other principal regulator, the Commodity Future Trading Commission, has embarked on a regulatory path at odds with the U.S. national interest.

The Fed's, Treasury's and the SEC's concerns about a rogue regulator were touched off by a long and detailed request for public comment on OTC derivatives trading practices issued in May by the Commodity Futures Trading Commission. OTC derivatives have some characteristics of futures—like futures, they are used to manage risk—but the Congress has never defined them as such and, in 1992, directed the CFTC to exempt them from the Commodity Exchange Act, which the CFTC administers. Although the CFTC stated in its release that its questionnaire was merely a fact-finding exercise, to everyone else it had the potential of radically changing the existing laws and regulations with the unsettling prospect that existing contracts could be invalidated. To the market place, the CFTC inquiry had all the tell-tale signs of precipitating a regulatory regime that would cause a market currently dominated by American firms and under American law to go off shore.

The current laws and regulations that govern the trading on our futures exchanges and over-the-counter markets are a tissue of ambiguities and exceptions—a veritable elysian field for lawyers. It is not an exaggeration to say a unilateral CFTC change in the definition of a swap, which was clearly contemplated in its public comment request, could invalidate thousands of similar contracts held by banks and other financial institutions and businesses here and abroad, worth billions of dollars. Such a stroke would jolt the world's financial system and force our financial institutions to take this innovative and profitable business to a foreign location, whether it be London, Tokyo or the Caribbean.

For better or worse, the word ''paradigm'' has in recent years become one of Washington's most fashionable expressions. At the risk of contributing to its overuse, it would appear that the interagency dispute that has been revealed is reflective of two separate but overlapping paradigms, one stemming from perspectives grounded in a career in law, the other from careers rooted in finance and economics.

Chairman Born's paradigm, which involves a legalistic reading of the Commodity Exchange Act, has certain merit in the abstract. But in the real world of trading, a world shaped by history and legislative intent, world not frozen in footnotes, the economic paradigm should be considered the dominant one. Indeed, the extraordinarily original analysis Chairman Greenspan provided the Banking Committee last week amounts to an essay that should be required reading for every college economics student.

The Greenspan paradigm will not be found in any legal tome because it captures a dynamic and fast-evolving situation, whereas the legalistic Born paradigm, by its very nature, must look backward for precedent.

In brief, Chairman Greenspan argued that, as currently implemented, the Commodity Exchange Act was not an appropriate framework for professional trading of financial futures. The CEA, he noted, was enacted in 1936 primarily to curb price manipulation in grain markets and its objectives haven't changed since then. As a consequence, we are applying today crop-futures regulation to instruments for which it is wholly inappropriate. The Greenspan view is that the financial derivatives markets are encumbered with a regulatory structure devised for a wholly different economic process, a structure that impedes the efficiency of the market system and slows down improvement in living standards.

This is rich food for thought for Congress. The interagency regulatory Donnybrook is unseemly, generating market tension and uncertainty. It shows that our system may need a fix. If a single regulator can roil markets with an institutionally self-serving and whimsical reading of the law, it is time to have a good look not only at the statutes but at who enforces them.

The ''who'' and the ''what'' of regulation in this area must be revisited, with an understanding that it is more important for regulation to be adapted to markets than for markets to be hamstrung by regulation. A balance involving legal certitude, especially of contracts, must be established. This balance must be flexible enough to accommodate innovation, but also legally firm when it comes to issues like fraud.

Chairman Born's July 24 letter to Chairman Smith in which she states ''the Commodity Futures Trading Commission . . . will not propose or issue'' OTC derivative regulations until the Congress convenes in January 1999 momentarily muted the crisis. But, in effect, her offer isn't much of a concession. It is far short of the agreement Chairman Smith believed he had reached—and so said in a press release: ''the CFTC will not pursue regulation of over-the-counter (OTC) derivatives until Congress has the opportunity to act during CFTC reauthorization in 1999.''

It is my view that it would be preferable to resolve this dispute without legislation and, accordingly, I chaired two informal meetings with the regulators to attempt to reach an non-legislated solution. But given the impasse, I introduced H.R. 4062, which provides a standstill on new regulation until the CFTC reauthorization is done. Work on this bill has been temporarily suspended to give everyone time for another effort at compromise. But if the Agricultural Committees don't address the issue, the bill remains on the table for consideration yet this year.

Meanwhile, I am asking the Secretary of the Treasury, in his capacity of chairman of the President's Working Group on Financial Markets, to undertake a study of our regulations and regulators. The industry, academic experts, and other interested parties, including users of derivative products, should be given a prominent voice in the study. The Treasury Secretary should provide the Group's findings and suggestions to the appropriate committees in the House and Senate by February 1, 1999, so that the Congress can get an early start on rebuilding our market supervision system. Nothing less than the primacy of the U.S. financial industry in the world is at stake—along with the safety and soundness of our banks and protection of their customers.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1999

SPEECH OF

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 29, 1998

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4194) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1999, and for other purposes:

Mr. MARKEY. Mr. Speaker, I rise in strong support of the motion to recommit offered by the gentleman from Wisconsin [Mr. OBEY].

Under the version of the bill reported out of the Appropriations Committee, a legislative rider was attached which would prevent the CPSC from adopting a rule regarding flammability standards for upholstered furniture until an outside panel was convened to examine the toxicity of fire retardants that would be used to treat such furniture. Currently the CPSC is considering a flammability standard for upholstered furniture. They are doing so pursuant to a petition from the National Association of State Fire Marshals, who asked the CPSC more than four years ago to develop a mandatory safety standard for upholstered furniture to address the risk of fires started from open flames—such as lighters, matches, and candles. The Fire Marshals called for such a rule because the U.S. has one of the highest fire death rates in the world. Nearly 4,000 people died in 1995 because of fires that started in their homes, of which nearly 1,000 were children under the age of 15.

Over the last four years the CPSC has been going through the process of taking public comments, conducting laboratory tests, and evaluating all the technical and economic issues relating to adoption of a safety standard in this area, including requirements relating to use of flame resistant chemicals to treat

upholstered furniture. The CPSC staff has been working with scientists from other agencies, such as the National Institute of Environmental Health Sciences and the EPA to assure that all of the significant public health and safety issues associated with adoption of such a rule would be studied.

Now, the bill before us today contains a provision that would, in the words of CPSC Chairwoman Ann Brown, ''completely halt work currently underway . . . on a safety regulation to address the risk of fire from upholstered furniture'' According to Chairwoman Brown, ''more fire deaths result from upholstered furniture than any other product under the CPSC's jurisdiction.'' The proposed rules in this area could save hundreds of lives and hundreds of millions in societal costs every year, according to CPSC staff estimates. And yet, instead of allowing the CPSC to proceed with its process, the legislative rider that has been attached to this bill would add at least a year's delay by requiring unnecessary and costly technical review and halting Commission work.

This anti-consumer rider will add additional cost and delays to an ongoing rulemaking process at the CPSC. It will micromanage the cost-benefit analysis that the CPSC is already required to undertake before it adopts a final rule. And it does so why? Well, according to last Friday's Washington Post, this provision is in the bill to benefit the narrow economic interests of a few upholstered furniture manufacturers in Mississippi who are opposed to a mandatory furniture flammability standard. As CPSC Chairwoman Brown has noted, the furniture industry's ''lobbyists are bringing the proper work of government to a halt.''

I think this is wrong. We should adopt the Motion to Recommit with Instructions that is being offered by the Gentleman from Wisconsin and allow the CPSC to move forward in conjunction with the EPA to adopt a flammability standard for upholstered furniture that fully protects the public from harm. The Clinton Administration has indicated in its Statement of Administration policy that it is opposed to this provision and warned that ''efforts to block the development of a new safety standard represent a threat to public health.'' I agree, and I hope that the Members will support the Obey motion.

MR. STARR: END THE UNFAIR LEAKS NOW

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, July 31, 1998

Mr. CONYERS. Mr. Speaker, Ken Starr's four year, $40 million investigation of the President repeatedly has been plagued by leaks, some of which have been patently untrue. The leaking has become so intolerable that it now threatens the very integrity of the Independent Counsel's work. For this, Mr. Starr has no one to blame but himself.

From the very beginning of his investigation, it is now known, the Independent Counsel and his staff have actively courted the media. They have admitted talking to reporters on an off-the-record basis about matters that would be coming before the grand jury, and they discussed how to provide substantive information to at least one journalist, who actually tape recorded that conversation. Meanwhile, as all of this was going on in the Independent Counsel's office, Mr. Starr was publicly and vigorously denying any such leaks. In fact, he said that leaks were a reason to fire people from their jobs in his office.

Leaking is not an inconsequential matter. It creates harm to the reputation of the individual who is the subject of the leak, and also to the Independent Counsel's ability to do his work. Mr. Starr is bound by law and ethical rules not to release grand jury information. That is because even the media focus that results from these leaks is enough to harm innocent people.

In January of this year, it was commonly assumed by the media and the general public that someone in the White House, almost certainly Deputy White House Counsel Bruce Lindsey, had participated in drafting the talking points supposedly given to Linda Tripp by Monica Lewinsky. These talking points were reputed to be the centerpiece of an obstruction of justice case that was being put together by the Independent Counsel. Speculation was rampant that Mr. Lindsey was headed toward a criminal indictment. But this speculation, fueled by off-the record comments, has finally been laid to rest. We have now learned that Ms. Lewinsky apparently wrote the talking points herself without any participation by anyone in the White House.

In the instance of attorney Vernon Jordan, there were numerous leaks implying that he was at the center of a conspiracy to find Ms. Lewinsky a job in New York. He was repeatedly called before the grand jury, but now it is being reported that Mr. Jordan is not a target of the Independent Counsel's investigation. While the charges made about him have finally melted away, what about the damage to his reputation, which previously was based on his distinguished record of service to the Bar?

There are other examples, but hopefully we have seen the last of these improper leaks from the Independent Counsel's office.

PERSONAL EXPLANATION

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 31, 1998

Mr. SERRANO. Mr. Speaker, on Wednesday, July 22nd and Thursday, July 23rd, I was unavoidably absent and missed rollcall votes 316–334. Had I been present, I would have voted as follows:

Rollcall 316—present (quorum call), rollcall 317—no, rollcall 318—no, rollcall 319—no, rollcall 320—yes, rollcall 321—no, rollcall 322—yes, rollcall 323—yes, rollcall 324—present (quorum call), rollcall 325—no, rollcall 326—no, rollcall 327—yes, rollcall 328—yes, rollcall 329—yes, rollcall 330—no, rollcall 331—no, rollcall 332—yes, rollcall 333—present (quorum call), and rollcall 334—yes.

IN HONOR OF UNITED AUTO WORKERS LOCAL 1050

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 31, 1998

Mr. KUCINICH. Mr. Speaker, I rise today to recognize the important work of United Auto Workers Local 1050 as the chapter enters its fiftieth year in defending the rights of working men and women. Dedicated to the cause of forging an equitable partnership between labor and management, Local 1050 has played a formidable role in Cleveland's labor history and promises only to grow in influence as industry continues to expand.

Receiving its charter in 1948, Local Chapter 1050 has benefited from the far reaching vision of twelve presidents, beginning with the election of Fred Barbeck. Today, Don Slaughter continues Local 1050's tradition of strong leadership. The contributions of Mr. Barbeck and Mr. Slaughter, and all of those that have served Local 1050 so capably, demand respect. The United Auto Workers was, at its brave beginnings, a social movement, an institution that derived its energy from the mistreatment of the working class. The UAW undertook with courage the daunting task of providing representation to those who had no voice, refusing to yield in the face of injustice. It was men such as Fred Barbeck and Don Slaguther who led this fight. It was workers like the men and women of Local 1050 who had the courage to follow. All of the men and women at every level of Local 1050 share in the United Auto Worker's proud legacy.

Today, Local 1050 boasts a membership of 1,146 workers. With the recent addition of two New Auto Wheel Plants, membership in Local 1050 promises only to grow. Let us hope that, under the leadership of Mr. Slaughter, these newfound numbers will provide Local 1050 with the strength to effect greater change in the interests of its members.

My fellow colleagues, let us congratulate Local 1050 on the fiftieth anniversary of its charter. Let us hope that, with a sense of their own proud past, they will continue to show courage in protecting those who do not have a voice.

IN HONOR OF LEOPOLD THIBAULT

HON. JAMES P. McGOVERN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, July 31, 1998

Mr. McGOVERN. Mr. Speaker, today I rise to honor Leopold Thibault, a distinguished World War II veteran from Somerset, Massachusetts.

On June 26, 1945, Mr. Thibault was traveling on a bombardment raid to the island of Truk. His mission, along with 10 other servicemen, was to bomb a Japanese installation. Mr. Thibault was not originally scheduled to be part of that mission, but he flew an extra mission that day. The plane carrying the 11 servicemen, for reasons that are still unknown today, took a nose dive. ''The aircraft came down, hit the runway, hit the airfield, burned and flipped over on its side and exploded,'' Mr. Thibault recalled.